



STATE OF INDIANA

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December 21, 2015

Ms. Susan Hege
21478 Durham Way
Bristol, Indiana 46507

Re: Formal Complaint 15-FC-290; Alleged Violation of the Access to Public Records Act by the Elkhart Superior Court

Dear Ms. Hege,

This advisory opinion is in response to your formal complaint alleging the Elkhart Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Court responded via the Honorable David C. Bonfiglio, Judge. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 20, 2015.

BACKGROUND

Your complaint dated October 20, 2015 alleges the Elkhart Superior Court violated the Access to Public Records Act by failing to provide the records you requested.

On or about June 29, 2015, your daughter requested a copy of a transcript of a hearing pursuant to her court proceeding. On July 13, 2015, the Court Reporter from Superior Court IV acknowledged her request advising her of a \$50-60 charge for the transcript. On October 5, 2015, you submitted a letter to the Court expressing your dissatisfaction with some conflicting information you received regarding the cost. You clearly contextualized your October 5, 2015 correspondence as an Access to Public Records Act (APRA) request.

Judge Bonfiglio issued an order on October 6, 2015 integrating your public access request into your daughter's court case. The Judge appeared to receive your request as a pleading which he deemed improper; as you are a non-attorney and he determined you were acting in a representative capacity. You take exception to the Court's treatment of your request as a pleading.



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On October 26, 2015 the Court responded. Judge Bonfiglio states there is a proper method for requesting transcripts and your daughter never made the arrangements with the court to be treated as indigent. Therefore, it was not until financial arrangements were made in October that the court prepared the transcript.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Elkhart Superior Court is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Court’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Your complaint appears to contest the manner in which the Court treated your request. The Court considered your public access request to be a pleading in your daughter’s court proceedings and you were acting as her counsel. Based on the information provided, it is my opinion you were not acting in a representative capacity on behalf of your daughter in your October 5, 2015 communication. It was not a pleading, but rather a request for a public record and is conspicuously marked as such.

The confusion, however, is exacerbated by the fact that a transcript is not a public record until it is actually prepared. Indiana Courts utilize court reporters to prepare transcripts upon request. The Indiana Court Administration has offered some guidance: “Recordings of court proceedings made by court reporters are public records...The public has the right to obtain the record within a reasonable period of time after making the request.” See *Public Access to Court Records Handbook*, Indiana Supreme Court, Division of State Court Administration, Appendix E, August 2015. The Indiana Supreme Court guidance does not differentiate between non-party and party requests to Court Reporters for transcripts.

To my knowledge, requests for transcripts do not typically go through a judge but are handled independently by the court reporter. Local rules sometimes dictate the process; however, LR20-AR15-NACR-15 does not designate how a request for a transcript is to be made. The request was not for an indigent transcript and therefore would not need the



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Judge's authorization. As long as you pay the requisite fee to the Court Reporter, it is a privately prepared transcript.

I respectfully disagree with the Court's handling of your request and do not consider your correspondence to be ex parte communication germane to a substantive issue of a pending proceeding; nor do I consider your letter to be a court pleading. The judiciary is subject to the Access to Public Records Act (APRA) as any other public agency with the caveat that the Indiana Administrative Court Rules also guides the handling of public records. See Ind. Code § 5-14-3-2(n) and Administrative Court Rule 9. In the future, I encourage the Court to distinguish between requests for public records and transcripts by non-parties and allow requesters to make these requests exclusive from the Court's jurisdiction over pending litigation.

Regards,

Luke H. Britt
Public Access Counselor

Cc: Hon. David C. Bonfiglio, Judge